COURT NO.6

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4644 (M/S) of 2001
(Old No. 34621 of 1995)

CIVIL SIDE

Leela Dhar Kandpal …. PETITIONER

Versus

District Judge, Almora and others …..RESPONDENTS

Hon'ble Rajesh, Tandon, J:

This writ petition has been filed against the order passed by the District Judge, Almora dated 31.10.1995.

Heard Sri Shakeb Khan for the petitioner and Sri B.D. Upadhyay for the respondents at length.

The brief facts are that at suit was filed by plaintiff respondent praying for the eviction of the petitioner as well as payment of arrears or rent, damages and water tax etc. According to the plaint averments, the petitioner is a tenant on a rent of Rs. 40/- per month and the rent is due from April 1983 to January 1988 and inspite of the notice he has not paid the rent amounting to Rs. 82840/-. It was further alleged that the petitioner has without any consent of the landlord has sublet the premises and as such he is liable to be evicted.

The suit was contested by the petitioner by filing written statement. The trial Court has dismissed the suit vide order dated 28.2.1989. The plaintiff filed a revision against the aforesaid order passed by the Civil Judge under section 25 of Provincial Small Causes Act. The revisional Court vide dated 31.10.1995 has allowed the

revision; hence the present writ petition has been filed under Article 226 of Constitution of India.

Bothe the parties exchanged their pleadings and since the matter relate to the year 1995, therefore, the parties have agreed that the writ petition itself may be disposed of at the admission stage.

The petitioner has submitted that it was not open for revisional court under section 25 of Provincial Small Causes Court Act to have recorded the findings by reassessing the evidence on record. Secondly once the trial Court has come to the conclusion that the plaintiff Abdul Salam has not let out the accommodation to the petitioner though he is joint owner of the accommodation along with his brother Noor Mohmad, therefore, in order to ascertain the title of the plaintiff judgment of Civil Suit no. 73 of 1987 Noor Mohmad vs. Abdul Salam was a relevant document in order to prove that the plaintiff was the exclusive owner of the property.

I have perused the petition as well as counter affidavit it appears that before the trial court in SCC Suit No. 5 of 1988 there was a specific case of the defendant that he has paid the entire rent due to the Noor Mohamad brother of the plaintiff and petitioner has always recognized Noor Mohmad as his landlord. The learned Judge has recorded findings of fact after perusal of the evidence on record.

The Plaintiff has filed papers Ex. 1 to Ex.7 in his evidence. The plaintiff was also examined on oath. After scrutiny of the evidence of the parties the learned Judge, S.C.C. has recorded findings to the following effect:

"In this circumstances. It is very clear that the brother of the plaintiff namely Noor Mohd. Used to recover the rent form the defendant Liladhar after the death of his father. The contention of the defendant Liladhar is supported by the evidence of P.W. Abdul Salam. It is also clear that the defendant Liladhar recognized Noor Mohd. as

his landlord and the plaintiff Abdul Salam was non entity for him as far as the question of landlord is there in these circumstances. I find that the plaintiff Abdul Salam was not entitled to file this suit against the defendant Liladhar and subtenant defendant Sunder Lal for eviction and recovery of arrears of rent and damages"

So far as subletting is concerned it has also come on the record on the basis of evidence of P.W.I that Sundar Lal was given accommodation with prior permission of Noor Mohmad who appeared as D.W.3. In the aforesaid circumstances the trial court has dismissed the suit.

I have also perused the judgment of the Civil Suit where suit for declaration filed by Noor Mohmad has been decreed and the following observations have been made by the learned Civil Judge, Almora on 28.2.1979.

"It is hereby declared that the waqf-alalaulad created by the late Hazi Abdul Mazid on 29.12.1966 in respect of the Municipal House No. 227 situated in Mohalla Karkhana Bazar, Almora is null and void and the plaintiff Noor Mohamad and the defendants Abdul Salam, Asgar Hussain. Abdul Kalam are entitled to the share of 33/160 each and the defendant no.4 Smt. Mahrulnisha and 5 Mohamad Islam, defendant no.6 Bahidul Islam and defendant no. 7 Smt. Jeenet are entitled to 7/40 shares each of the house:-

The revisional Court has set aside the judgment and has passed decree for eviction. Before revisional Court it was also pointed out that written consent Ex. Ka-16 was also there which was executed by Noor Mohmad. The revisional Court has not even referred to the judgment of the Civil Court where will has been described and also findings of subletting was also without discussing evidence on record.

In the counter affidavit it has been stated that he has already filed appeal against the judgment and decree 28.2.1989 and the same is pending for disposal. Since the revisional court has reversed the judgment of the trial court in revision under section 25 of Provincial Small Causes Court Act, it was not open to him as jurisdiction under section 25 has been defined in 2000 Full Bench Rent Cases, SC 325, *K.M. Abdul Razzak vs Damodharan* where it has been held as under:

"Instead of remanding the matter of the Appellate Authority, the High Court has taken up the exercise to record findings on the aforesaid illustrative elements after re-appreciating the evidence which we think was not permissible under section 25 of the Act. It is not permissible for the High Court, in exercise of its revisionary jurisdiction to act as an Appellate Court to reappraise or reassess the evidence afresh as an Appellate Court and come to a different finding contrary to the finding recorded by the Court below. We, therefore, hold that the High Court while allowing the revision transgressed its jurisdiction conferred upon it under section 25 of the Act."

Similar view has been taken by the division Bench of Allahabad High Court in 1979 A.Civ. J. 473. Laxmi Kishore and others. Vs. Har Prasad Shukla. Their Lordships have observed as under.

"The court deciding a revision under section 25 of the Provincial Small Cause Courts Act has to satisfy itself that the trial courts' decree or order is according to law. Of course, the Revisional Court should keep in mind the Supreme Court's dictum in Naicker's case (supra) that a wrong decision on facts is along a decision according to law.

If it finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore that finding. Same will be the case where the finding is based on in admission evidence. In such cases the court will be justified in deciding the question of a fact itself,

because the evidence is all way. No assessment is needed. The Court can also decide the revision if only a question of law or some preliminary point of law viz. Validity of notice is sufficient for its decision.

But, if it finds that a particular finding of fact is vitiated by an error of law. It has power to pass such order as the justice of the case requires; but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact of itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot enter into the evidence, asses it and determine as issue of fact."

The aforesaid Division Bench has been followed in the case of *Om Prakash and others vs. IInd Additional District Judge*, Saharanpur 2000(2) A.R.C. 739. Referring to the judgments of Apex Court in *Hari Shanker and others v. Rao Girdhari Lal Chaudhary*, AIR 1963 SC 698, *State of Kerala vs. K.M.C. Abdulla dn Company Air 1965 SC 1585, Malini Ayappa Naicker vs. Seth Manghraj Udhavdas, AIR 1969, Dr. D. Sankaranayrayanan vs. Punjab National Bank 1995 Supp. (4) SCC 675 and Rafat Ali v. Sugni Bai and others JT 1998 (8) SC 157: 1999 SCFBRC 41*, it has been held as under.

"After making the abovenoted observations, the court below has re-assessed the entire evidence, oral and documentary, on the record and wrote judgment spreading over 52 (typed) pages substituting its own findings for the findings recorded by the trial court. Legally, if in the opinion of the Court below the findings recorded by the trial Court were not legal, after setting aside the said findings, it could at the best remand the case to the trial Court for decision afresh. It has acted illegally and in excess of its jurisdiction

in allowing the revision and decreeing the suit for ejectment on the ground of material alteration and structural changes."

In my opinion the revisional Court has no jurisdiction to reassess or reappraise the evidence and once the findings were recorded by the trial court dismissing the suit on the ground of title as well as on the ground of subletting it was not open for the reivisional court to have reassessed the evidence. Paragraph 11 and 12 of the judgment shows that the revisional court has reassessed the evidence in order to come to a different conclusion. The revisional Court has illegally reassessed the evidence to the following effect:

"The case of the plaintiff is that by will Ex. 7 he has been authorized to let out the disputed house to the tenants, realize the rent of the same and evict the tenants there from. Noor Mohammad is real brother of the plaintiff. He as D.w. 3 admitted in the first para of cross-examination that Abdul Salam is his brother. Their father in 1966 executed a will copy of which is Ex-7 on file. He knew in 1986 that through this will his father has authorized Abdul Salam (Plainff) to let out the house and realize the rent, His exact words are as under.

हम पाँच भाई है। अब्दुल कलाम अन्सारी व अब्दुल सलाम अन्सारी मुझसे बड़े हैं। मेरे पिता ने सप 66 में क वसीयत की थी। उसकी नकल पत्रावली पर 31 ग है। जो प्रदर्श 7 है। मुझे सन् 1986 में पता चला कि इस वसीयत नाम के द्वारा मेरे पिता ने अब्दुल सलाम को किराया लेने किराये पर उठाने का अधिकार दिया है।

There are several receipts on record filed by the defendants admittedly signed by Noor Mohammad; but latter has admitted on his cross examination that he used to realize the rent because Abdul Salam (plaintiff) and his mother authorised him. Recipt paper no. 51-C dated 11.10.61 (Ex. Ka/8) has been signed by him for Abdul Salam Ansari. His statement that he has been authorised by his mother and abdul Salam appears totally false because he did not adduce any evidence to prove his fact. Moreover, had he been authorised to

realize the rent, there was no need of issuing notices dated 26.5.84 and 18.11.83 to Liladhar by the plaintiff."

In the light of the aforesaid facts and circumstances in my opinion the revisional court should have remanded the matter if in the opinion of the revisional court interference under section 25 of the Act required consideration after assessment of evidence, documentary or oral as held by the Division Bench of Allahabad High Court. Apart from that the revisional court should have also considered that the title of the plaintiff will depend upon the decision of appeal arising out of the suit No. 73 of 1987. All these aspects of the matter require consideration of the revisional court afresh.

The result is that the writ petition is allowed. Order dated 31.10.1995 passed by the District Judge. Almora is set aside. The Matter is remanded back to the revisional court to decide the revision afresh in the light of the observations made above within a period of four months from the date of filing of the certified copy of the orders.

(Rajesh, Tandon, J)

30.08.2003
Dhyani